DOCUMENT RESUME

ED 140 412 EA 009 567

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TITLE The Explicit and Implicit Organizational Structures for the Collective Bargaining Process under the California Legislation.
PUB DATE 18 Nov 76
NOTE 8p.; Paper presented at the Annual Meeting of the California Educational Research Association (55th, Burlingame, California, November 18-19, 1976); For related documents, see EA 009 566-569

EDRS PRICE MF-$0.83 HC-$1.67 Plus Postage.
DESCRIPTORS *Collective Bargaining; Elementary Secondary Education; Employer Employee Relationship; Government Employees; Industrial Relations; *School Personnel; *State Legislation; Unions
IDENTIFIERS *California

ABSTRACT

Douglas Mitchell suggests that statute construction issues arise from the interaction between the realities of power resources and the goal of giving each interest group sufficient power to protect and pursue its own interests while preserving the rights or interests of others. California SB 160 explicitly limits the scope of bargaining to wages, hours, specified health and welfare benefits, leave and transfer policies, safety conditions, class size, employee evaluation, and grievance procedures. Second, SB 160 mandates bargaining in good faith with exclusive representation as the means to resolve persistent disagreements. Third, SB 160 gives employees the right to join or refuse to join employee organizations of their own choosing, except that only one exclusive representative may negotiate for employees in any unit. Fourth, SB 160 provides for public disclosure of initial collective bargaining proposals. Fifth SB 160 creates a three-member Educational Employment Relations Board to regulate administrative procedures of the collective bargaining process. A major concern of classroom teachers under SB 160 has been the selection of an exclusive bargaining unit to advance their demands for improvements in salaries and employment conditions. The administration, on the other hand, has been concerned with maintaining its flexibility to change as conditions change. (Author/JG)

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THE EXPLICIT AND IMPLICIT ORGANIZATIONAL STRUCTURES FOR THE COLLECTIVE BARGAINING PROCESS UNDER THE CALIFORNIA LEGISLATION

by

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November 18, 1976

Presented as part of a symposium entitled "Organization, Collective Bargaining and Work", at the annual meeting of the California Educational Research Association, Burlingame, California.

EA 009 567

The Explicit and Implicit Organizational Structures

for the

Collective Bargaining Process Under the California Legislation

A newspaper clipping following the passage of the California Public School Collective Bargaining law, SB160 read:

> On June 24 the California Senate acted to bring about the gradual demise of our public school system in California.
>
> By a 23-9 vote they passed legislation which 'would allow school employees to bargain for an agency shop, requiring all persons (teachers included) to pay union dues!'
>
> A U.S. citizen having to pay a fee to a union in order for his own government is reprehensible.[1]

The significance of this bill as viewed by this newspaper article was suggested:

> Collective bargaining for teachers means an increase in strikes, loss of public control of the schools which taxpayers support, a drastic increase in taxes and eventual textbook and curriculum control.[2]

It is the purpose of this presentation to describe the explicit organizational structure for the Collective Bargaining process established by the California Rodda Bill, SB160. Additionally, the more implicit aspects will be highlighted by focusing on how teachers, administrators, and other certificated school personnel might capitalize on various aspects of the collective bargaining process.

The stated purpose of the Rodda Bill is to "promote the improvement of personnel management and employer-employee relations within the public school systems in the State of California...and to afford certificated employees a voice in the formulation of educational policy".[3]

A recent paper by Mitchell suggests that statue construction issues arise from the interaction between the realities of power resources and

the goal of giving each interest group sufficient power to protect and pursue its own interests while preserving the rights and interests of others. In this paper five major statute issues are identified as major organizational concepts for the development of collective bargaining for the public schools. It seems advantageous to utilize these concepts in describing the organizational structure of the California Rodda Bill.

The first of these issues is that of the scope of bargaining. California SB160 makes the explicit scope of representation limited to wages, hours of employment, specified health and welfare benefits, leave and transfer policies, safety conditions of employment, class size, employee evaluation procedures and grievance processing procedures. In addition, the exclusive representative of certificated personnel has the right to consult on the definition of educational objectives, the determination of the content of courses and curriculum, and the selection of textbooks to the extent such matters are within the discretion of the public school employer under the law.

The second major issue noted by Mitchell which has typically been considered in the development of a collective bargaining statute is how to resolve persistent disagreements between the parties when an impasse is reached. Bargaining in good faith with an exclusive representation is mandated under SB160. Also, it authorizes employee-employers to enter into written agreements covering matters within the scope of representation, including organizational security, and exempts such agreements from a specified policy provision. Such agreements are authorized to provide for final and binding grievance arbitration of disputes involving interpretation, application, or violation of such agreements. Either a public school employer or the exclusive representative of the employees has the

right to declare that an impasse has been reached in negotiations over matters within the scope of representation. A list of mediators, arbitrators and fact finders are established by SB160 for each stage in the impasse proceedings. SB160 does not change the status of strikes made by Section 923 of the Labor Code.

The third major issue in viewing the structure of Collective Bargaining in California is: How strong should union organizations become and who should belong to a bargaining unit? California public school employees under SB160 have the right to form, join, and participate in the activities of employee organizations of their own choosing. They also have the right to refuse to join or participate in the activities of employee organizations and have the right to represent themselves individually in their employment relations, except that once the employees in an appropriate unit have selected an exclusive representative, no employee in that unit may meet and negotiate with the public school employees. Any employee may present grievances at any time to his/her employer as long as it is prior to arbitration proceedings. The statute permits agency shops to be formed and dues check off procedures to be established. SB160 does prohibit the exclusive representation of individuals serving in management positions. A management employee is defined by this law as any employee in a position having significant responsibilities for formulating district policies or administering district programs.

The fourth issue suggested by Mitchell is public participation in or access to the negotiation process. The current structure of California's public school collective bargaining includes public disclosure of initial proposals of exclusive representatives and of public school employers, which relate to matters within the scope of representation.

The final issue concerns itself with the administrative procedures of the collective bargaining process. The three member Educational Employment Relations Board created by SB160 is responsible for the establishment of lists of mediators, arbitrators, and fact finders; prescription requirements and procedures for recognition and certification of exclusive representatives; and for review requirements.

Fair consideration of the process of collective negotiations in public education requires us to also consider the interpretations and framed positions taken by key units. Three of these units to be considered here today are the teachers, administrators, and other certificated school personnel, namely, specialized teachers.

As collective bargaining takes place, one may expect divergent interests to emerge from these units. Each unit will tend to capitalize on various parts of the statutes which tend to be vulnerable to interpretations.

One effect of the Rodda Bill has been that the system of teachers' groups sharing power on bargaining teams on a proportional basis (as mandated under the old Winton Act) has had to be scrapped. As a result, a major concern of the classroom teachers has been in the selection of an exclusive bargaining unit to represent their interests. The classroom teacher predictably wants improvements in his/her employment circumstances. Higher salaries, eased requirements of the job, improved physical conditions are all legitimate demands that members of this unit will expect to have advanced by their representative.[4]

The administration, on the other hand, has tended to be primarily concerned with operating the schools. This concern is often reflected in two ways. Administration always fears long-term guarantees since its ability to finance the guarantees may change. And, administration is

properly concerned that its flexibility to change as situations change not be unduly compromised. Recent research[5] has indicated that, in contrast to teacher contracts, supervisory (principals) ones are less formalized in the area of employee rights and negotiating procedures; teacher contracts spell out hours of work and types of jobs, for example. Supervisor contracts often leave job descriptions up to individual situations, possibly reacting to the nature of school supervision. However, extras like sabbaticals, group income and disability insurance, and legal aid protection on the job are often included in the administrator contracts though not in the teacher contracts.

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